IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

TRC.No. 385 of 2002

AITA.99/1999 of AGRL.I.T.ADL.BENCH,ERNAKULAM

PETITIONER: APPELLANT IN T.A/ASSESSEE

M/S.HARRISONS MALAYALAM LIMITED,
WILLINGDON ISLAND, KOCHI - 3,
REPRESENTED BY ITS COMPANY SECRETARY,
MR.P.A.KRISHNAMOORTHY.

BY ADV. SRI.A.K.JAYASANKAR NAMBIAR
SRI.ANIL D. NAIR

RESPONDENTS: RESPONDENT IN T.A.

STATE OF KERALA.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON ON 24/07/2007, ALONG WITH TRC NO.399 AND 419 OF 2002, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

T.R.C. NOS. 385, 399 & 419 of 2002

Dated this the 24th July, 2007

O R D E R

H.L.DATTU, C.J.

These revision petitions are filed under the provisions of the Kerala Agricultural Income Tax Act,1991 (hereinafter for the sake of convenience and brevity, referred to as "the Act").

2. The assessment years in question are 1994-95, 1991-92 and 1993-94.

3. Petitioner is a company incorporated under the provisions of the Companies Act. The petitioner company is a dealer in rubber and manufacture of tea. The assessing authority under the Act had completed the assessments for the assessment years in question under Section 39(3) of the Act.

4. The assessing officer, being of the opinion that the agricultural income chargeable to tax under the Act has escaped assessment for the assessment years in question, had initiated proceedings under Section 41(1) of the Act. The reason for re-opening the assessment was that the replanting allowance on rubber and cardamom was wrongly allowed at the time of completion of the assessment proceedings under Section 39(3) of the Act. After receipt of the show cause notice, the assessee had filed its reply resisting the proposal made in the show cause notice.

5. The assessing authority, after considering the reply so filed by the assessee,had confirmed the proposal made in the show cause notice and thereby had brought to tax the escaped turnover, under the Act, the amounts spent for replanting of rubber and cardamom.

6. Aggrieved by the orders passed by the assessing authority under Section

41(1) of the Act, the assessee had preferred appeals before the First Appellate Authority. Before the said authority,the assessee had raised two issues. They are: That the re-opening of the assessment by the assessing authority is bad in law for the reason that on change of opinion the reassessment is impermissible. The other issue that was canvassed before the First Appellate Authority was that the assessing authority erred in assessing the income derived from sale value added grades of rubber like cenex PLC etc. (income arising on process not ordinarily employed by a cultivator). The assessing authority should have found that the said income do not constitute agricultural income as defined under the provisions of the Agricultural Income Tax Act and, therefore, the assessing authority should have excluded the related income from the assessment by following the decision of this Court in the case of ***Kanam Latex Industries Pvt. Ltd.*** (221 ITR 1).

7. The Appellate Authority has answered both the issues against the assessee and in favour of the Revenue.

8. Aggrieved by the said order passed by the Appellate Authority, the assessee had carried the matter by filing second appeals before the Tribunal in T.A.Nos.99 of 1999, 31 of 1999 and 42 of 1999 respectively. The Tribunal by its common order dated 30th March, 2002 has rejected the appeals filed by the assessee and while doing so the Tribunal has confirmed the view of the First Appellate Authority in so far as the reopening of the assessments is concerned. In so far as the second legal issue canvassed, the Tribunal has stated as under:

> "As per section 2(1) of the AIT Act, agricultural income means any income derived from land by agriculture or by any process ordinarily employed by a cultivator to render the produce raised or

> received by him fit to be taken to market. No doubt rubber plantation is an agricultural activity and unless it is provided otherwise, income from rubber plantation is to be treated as agricultural income. Of course in the case if income from manufactured tea Rule 8(1) of the Income Tax Rules 1961 provides for allocation of the income as agricultural income and business income in the ratio 60:40. But in the case of rubber income, Rules do not provide for any such allocation. Here of course the learned representative of the assessee has brought to our notice that as per Finance Act 2001, Rule 7A has been introduced w.e.f.1.4.2002, as per which provision 65% of the income from Cenex will be treated as business income. But significantly enough during the relevant period no Rule provides for any such allocation. That is to say, unlike in the case of tea income, rubber income is not to be apportioned as agricultural income and business income till 31.3.2002. We are therefore of the view that during the relevant period no portion of rubber income, whether by sale of value added grades of rubber or by sale of conventional types or rubber sheets, can be treated as business income. In that view of the matter the question as to whether the process employed by the assessee to produce value added grades of rubber involves manufacturing activity, does not assume much importance. We are therefore unable to accept the contention of the assessee that a portion of income from rubber is to be treated as business income. That the proposal made by the Central Income Tax Authorities to treat a portion of rubber income as business income is also not decisive, if it is agricultural income assessable under the State Agricultural Income Tax Act. We therefore reject the contention of the assessee in this regard and confirm the order of the 1st appellate authority."

9. The assessee aggrieved by the aforesaid order passed by the Tribunal, has filed these Tax Revision Cases under Section 78 of the Agricultural Income Tax Act, 1963.

10. The assessee has raised the following three issues for consideration and decision of this Court. They are as under:

> "i) In the facts and circumstances of the case ought not the tribunal have set aside the assessment completed under Section 41(1) of the AIT Act on the ground that reopening was done by forming the different opinion on the same materials and that there was no fresh material for doing so?

ii) In the facts and circumstances of the case ought not the tribunal have set aside the assessment under Section 41(1) more so relying on the judgment of this Court in the matter reported in 1997 KLJ Tax Cases 177?

iii) In the facts and circumstances of the case ought not the tribunal have allowed the disallowance of initial depreciation?"

11. The issue Nos.(i) and (ii) can be combined and disposed of. For the aforesaid purpose, the provisions of Section 41(1) of the Act requires to be noticed by us. Section 41(1) of the Act reads as under:

> "41. **Income escaping assessment**:- (1) If for any reason agricultural income chargeable to tax under this Act has escaped assessment in any financial year or has been assessed at too low a rate, the Agricultural Income Tax Officer may at any time within ten years of the end of that year and subject to the provision of sub-section (2), serve on the person liable to pay the tax, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 35 and may proceed to assess or reassess such income and the provisions of this Act, shall, so far as may be apply accordingly as if the notice were a notice issued under that sub-section:
>
> Provided that the tax shall be charged at the rate at which it would have been charged if such income had not escaped assessment or full assessment, as the case may be:
>
> Provided further that the Agricultural Income Tax Officer shall not issue a notice under this sub-section unless he had recorded his reasons for doing so."

12. The opening of the words in Section 41(1) of the Act, "if for any reason" the agricultural income chargeable to tax has escaped assessment or has been assessed at too low rate. The expression "if for any reason" used in the section is of wide import. That only means the escapement of assessment may be due to various reasons. The escapement envisaged by section 41 of the Act need not

necessarily spring from a source extraneous to the original record. Initiation of proceedings under this section can be taken on the basis of materials already on record at the time of original assessment, if the escapement of assessment to tax was a result of lack of care or inadvertence on the part of the assessing officer.

13. Sri.Anil D.Nair, learned counsel appearing for the assessee would contend that all the materials were available before the assessing authority when he completed the assessments for the assessment years in question and, therefore, by issuing a notice under Section 41(1) of the Act, could not have reopened the assessments on the sole ground that replanting allowance on rubber and cardamom was wrongly allowed. This, according to the learned counsel, is nothing but a change of opinion and the same is impermissible under the Act.

14. In our opinion, the contention canvassed by the learned counsel for the assessee should not detain us for a long. In the instant case, in the returns filed, the assessee had claimed allowance of expenditure while computing the Agricultural Income for the purpose of the Act. This had been allowed by the assessing authority and thereafter, realising that the alowance so granted is contrary to the provisions of the Act, has initiated proceedings under Section 41(1) of the Act. This, in our opinion, is permissible under the Act, in view of the language employed in Section 41 of the Act. A turnover escapes assessment when it is not noticed by the officer either because it is not before him by reason of inadvertent omission or deliberate concealment on the part of the assessee or because want of care on the part of the officer, the turnover though shown in returns was not taken notice of. The present case falls, in our view, in the last category. Therefore, the contention of the learned

counsel that there was change of opinion and therefore re-assessment is impermissible in law cannot be accepted. A similar provision had come up for consideration before the Karnataka High Court in the case of **Kesoram Rayon** v. **Commissioner of Commercial Taxes, Bangalore** [(1989) 75 STC 13]. In the said decision, while considering the scope of Section 12A of the Karnataka Sales Tax Act, 1957, which provides for reassessment of completed assessment, the Court has observed as under:

> "In our opinion, language of section 12A of the Act is clear and unambiguous. It confers power on the assessing authority to make a reassessment even in cases where the entire turnover was before the assessing authority, but it had committed a mistake in the matter of rate of tax in that a lower rate of tax than the one at which the tax ought to have been levied had been levied. Therefore, the question set out first has to be answered in the affirmative and against the petitioners."

15. In view of the above, the first two questions of law raised by the assessee requires to be answered against the assessee and in favour of the Revenue.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/DK.